

lit.

0041B

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

SANFORD M. BERLOVE,)	
)	
Appellant,)	PCHB No. 91-61
)	
v.)	
)	
PUGET SOUND AIR POLLUTION)	FINAL FINDINGS OF FACT,
CONTROL AGENCY,)	CONCLUSIONS OF LAW
)	AND ORDER
Respondent.)	
)	

THIS MATTER, the appeal of a notice and order of civil penalty (No. 7351), assessing \$1,000.00 for alleged violations of asbestos removal procedures, came on for hearing on September 10, 1991, in Lacey, Washington. Annette S. McGee, Member, and Harold S. Zimmerman, Chairman and presiding, heard the appeal.

Appellant Sanford M. Berlove represented himself. Keith D. McGoffin, Attorney at Law, represented respondent. The proceedings were reported by Bibiana D. Carter of Gene Barker and Associates, Olympia.

Exhibits were admitted and examined. Witnesses were sworn and testified, including appellant Berlove. From the testimony heard and exhibits examined, the Board makes the following

FINDINGS OF FACT

I

Puget Sound Air Pollution Control Agency (PSAPCA) is a municipal

1 corporation with authority to conduct a program of air pollution
2 prevention and control in an area which includes Seattle. We take
3 notice of Regulation III, Article 4, which deals with removal and
4 encapsulation of asbestos.

5 On January 8, 1991, at approximately 2:00 p.m., Air Pollution
6 Inspector Elizabeth M. Gilpin and Senior Asbestos Inspector Joseph J.
7 Eng of PSAPCA inspected an asbestos project at 311 Blaine Street,
8 Seattle, King County, Washington.

9 III

10 The inspectors observed several pieces of Cementitious Asbestos
11 Board (CAB) scattered on the lawn and walkway of the residence at 331
12 Blaine Street. Inspector Gilpin also observed that there were pieces
13 of CAB inside a dumpster located directly in front of the house at 311
14 Blaine Street, Seattle, and adjacent to the sidewalk. The dumpster
15 was not labeled as asbestos-containing material, nor was it in a
16 "controlled area" as defined by Section 4.02(J) of PSAPCA Regulation
17 III.

18 IV

19 Inspector Eng took photographs of the area at 311 Blaine Street,
20 and Inspector Gilpin collected a sample of CAB from the front yard of
21 the residence. She filled out an asbestos field sample data and chain
22 of custody form, and forwarded the sample to Susan Davis, at the
23 Department of Ecology Laboratory at Manchester, Kitsap County, for
24

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
PCHB No. 91-51

1 analysis. On January 10, 1991, Ms. Davis' written Asbestos Analysis
2 report of this sample was received by PSAPCA and showed the sample
3 from 311 Blaine Street, Seattle contained 35% or more chrysotile
4 asbestos.

5 V

6 Sanford M. Berlove, 7733 Hansen Road, Bainbridge Island,
7 Washington, owns the property and home at 311 Blaine Street, Seattle.
8 He had moved up from California where he was a computer salesman. His
9 intention had been to remodel the home. He was unaware of asbestos on
10 the siding of the house, when he removed it. Nor was he aware of the
11 requirements for filing if one intends to remove asbestos or
12 encapsulate it.

13 VI

14 On January 8, 1991, Inspector Eng telephoned Mr. Berlove, to
15 verbally inform him of the possible alleged violation of Article 4 of
16 PSAPCA Regulation III.

17 Inspector Gilpin, January 25, 1991, issued Notices of Violation
18 No. 10-000303, 10-0000304 and 10-000305 for these alleged violations:

19 Section 4.03(a)(1) - Failure to file written Notice
20 of Intent to Remove or Encapsulate Asbestos before
21 beginning work on an asbestos project;
22 Section 4.04(a)(4)(B) - Failure to collect any
23 asbestos-containing materials that have been removed
24 or may have fallen off components during the course of
an asbestos project for disposal at the end of each
working day;
25 Section 4.04(a)(4)(C) - Failure to contain
26 asbestos-containing materials that have been removed

1 or may have fallen off components during the course
2 of an asbestos project in a controlled area at all
3 times until transported to a waste disposal site;
4 Section 4.05(a)(5)(C) - Failure to keep
5 asbestos-containing material on small components such
6 as pipes, beams, and small tanks adequately wet during
7 stripping and collection for disposal or, if removed
8 in units or sections, contained in a leak-tight
9 wrapping and labeled in accordance with Subsections
10 4.05(A)(1)(f) after wetting;
11 Section 4.05(a)(1)(B) - Failure to seal all
12 asbestos-containing materials in leak-tight containers
13 after wetting to ensure they remain adequately wet
14 when deposited at a waste disposal site;
15 Section 4.05(a)(1)(C) - Failure to label each
16 container or asbestos-containing waste material with
17 an asbestos warning sign as specified by the
18 Washington Department of Labor & Industries or the
19 Occupational Safety and Health Administration and to
20 seal and wet all asbestos-containing waste in
21 leak-tight containers, labeled with an asbestos
22 warning sign, when deposited at a waste disposal site.

23 VII

24 The very next day, on January 9, 1991, Mr. Berlove went to the
25 residence. An asbestos expert from the Department of Labor and
26 Industries was there, and outlined to him what is required in an
27 asbestos project, explained possible violations, and told him how to
clean up his property legally.

28 VIII

29 Appellant Berlove began the clean-up immediately, and stopped his
30 sub-contractors from doing any further work. In two weeks he had
31 cleaned up the place, following the instructions he had been given by
32 the Labor and Industries representative, in accordance with the rules
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1 for removing asbestos, bagging it and keeping it in a specific place.
2 When the L & I inspector returned for re-inspection, he said
3 everything was satisfactory.

4 IX

5 On January 15, 1991, Mr. Berlove filed with PSAPCA "Notice of
6 Intent to Remove or Encapsulate Asbestos" form for the asbestos
7 project at 311 Blaine Street, Seattle.

8 X

9 On February 4, 1991, PSAPCA issued the Notice and Order of Civil
10 Penalty No. 7351 to Sanford Berlove in the amount of \$1,000 for the
11 alleged violations on January 8, 1991.

12 XI

-3 Mr. Berlove cleaned up what was considered the area of most
14 concern, the basement, where a boiler had been removed. The entire
15 cleanup was finished in two weeks, with the most serious concerns done
16 in two days. The most difficult, time consuming part was the 30-cubic
17 yard debris box, in which shingles had been placed, and then concrete
18 foundation had been dumped on top. It took Appellant Berlove three
19 days to break up the concrete to completely unload the debris box and
20 package up the material in it.

21 XII

22 Appellant Berlove did not deny that violations did occur. He
23 admitted he did not know he was to file for asbestos removal, nor was
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1 he aware of other requirements until he was informed by a
2 representative from Labor and Industries.

3 XIII

4 Any Conclusion of Law which is deemed a Finding of Fact is hereby
5 adopted as such.

6 From these Findings of Fact, the Board enters the following

7 CONCLUSIONS OF LAW

8 I

9 The Board has jurisdiction over the parties and the subject
10 matter. Chapters 43.21B and 70.94 RCW.

11 II

12 Based on our Findings and by the appellant's candid admission,
13 the violations of Regulation III, Article 4, Sections 4.03(a)(1);
14 4.04(a)(4)(B), 4.04(a)(4)(C), 4.05(a)(5)(C); 4.05(a)(1)(B); and
15 4.05(a)(1)(C) did occur, and are the proper basis for the civil
16 penalty of \$1,000.00.

17 III

18 The penalty assessed, \$1,000, is the maximum fine per violation
19 per day. Civil penalties are based upon several factors: scope and
20 extent of the violations, the previous record of the individual or
21 company charged, the promptness and thoroughness of his corrective
22 actions upon learning of alleged violations, (but before the penalty
23 issued). Civil penalties are intended not for punishment, but to
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1 change the individual's and the public's behavior. In the instant
2 case, we conclude the appellant quickly responded when notified, at
3 considerable cost to himself, and conscientiously proceeded to follow
4 all the instructions. For a first violation, and in light of the
5 record before us, some degree of mitigation is appropriate.

6 IV

7 Any Finding of Fact which is deemed a Conclusion of Law is hereby
8 adopted as such.

9 From these Conclusions of Law, the Board enters this
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ORDER

The violations of Reg. III, Article 4, as cited, are affirmed.
The \$1,000 civil penalty is affirmed, but \$800 is SUSPENDED provided
the appellant does not violate the State Clean Air Act, Chapt. 70.94
RCW, or local air authority's regulations for two years from the date
of this order.

DONE this 2nd day of December, 1991.

POLLUTION CONTROL HEARINGS BOARD



HAROLD S. ZIMMERMAN, Presiding



ANNETTE S. MCGEE, Member